

benefit were designed to be provided on a nontaxable basis with employer contributions. Also, note that section 125(d)(2) provides that a cafeteria plan may not offer a benefit that defers the receipt of compensation (other than the opportunity to make elective contributions under a qualified cash or deferred arrangement) and may not operate in a manner that enables participants to defer the receipt of compensation.

[T.D. 8073, 51 FR 4318, Feb. 4, 1986]

§ 1.127-1 Amounts received under a qualified educational assistance program.

(a) *Exclusion from gross income.* The gross income of an employee does not include—

(1) Amounts paid to, or on behalf of the employee under a qualified educational assistance program described in § 1.127-2, or

(2) The value of education provided to the employee under such a program.

(b) *Disallowance of excluded amounts as credit or deduction.* Any amount excluded from the gross income of an employee under paragraph (a) of this section shall not be allowed as a credit or deduction to such employee under any other provision of this part.

(c) *Amounts received under a non-qualified program.* Any amount received under an educational assistance program that is not a “qualified program” described in § 1.127-2 will not be excluded from gross income under paragraph (a) of this section. All or part of the amounts received under such a nonqualified program may, however, be excluded under section 117 or deducted under section 162 or section 212 (as the case may be), if the requirements of such section are satisfied.

(d) *Definitions.* For rules relating to the meaning of the terms “employee” and “employer”, see paragraph (h) of § 1.127-2.

(e) *Effective date.* This section is effective for taxable years of the employee beginning after December 31, 1978, and before January 1, 1984.

[T.D. 7898, 48 FR 31017, July 6, 1983]

§ 1.127-2 Qualified educational assistance program.

(a) *In general.* A qualified educational assistance program is a plan established and maintained by an employer under which the employer provides educational assistance to employees. To be a qualified program, the requirements described in paragraphs (b) through (g) of this section must be satisfied. It is not required that a program be funded or that the employer apply to the Internal Revenue Service for a determination that the plan is a qualified program. However, under § 601.201 (relating to rulings and determination letters), an employer may request that the Service determine whether a plan is a qualified program.

(b) *Separate written plan.* The program must be a separate written plan of the employer. This requirement means that the terms of the program must be set forth in a separate document or documents providing only educational assistance within the meaning of paragraph (c) of this section. The requirement for a separate plan does not, however, preclude an educational assistance program from being part of a more comprehensive employer plan that provides a choice of nontaxable benefits to employees.

(c) *Educational assistance—(1) In general.* The benefits provided under the program must consist solely of educational assistance. The term “educational assistance” means—

(i) The employer’s payment of expenses incurred by or on behalf of an employee for education, or

(ii) The employer’s provision of education to an employee.

(2) *Alternative benefits.* Benefits will not be considered to consist solely of educational assistance if the program, in form or in actual operation, provides employees with a choice between educational assistance and other remuneration includible in the employee’s gross income.

(3) *Certain benefits not considered educational assistance.* The term “educational assistance” does not include the employer’s payment for, or provision of—

(i) Tools or supplies (other than textbooks) that the employee may retain